

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

HILLCAP I, LLC, ET AL.,

Appellant/Plaintiffs Below

v.

LYNN MAY,

Appellee/Defendant Below.

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C.A. No: CPU4-18-002449

Reserved: May 16, 2019
Decided: June 24, 2019

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OPINION ON APPELLANT'S APPEAL

WELCH, J.

FACTUAL AND PROCEDURAL HISTORY

On July 7, 2017, Hillcap I, LLC and Hillcap II, LLC (collectively “Appellants”) initiated a summary possession action against Lynn May (hereinafter “Appellee”) in the Justice of the Peace Court (hereinafter “JP Court”) to recover possession of the rented property and monetary damages for unpaid rent. On August 23, 2017, the JP Court entered default judgment against Appellee for failure to file an answer or appear for trial.

Following default judgment, Appellant evicted Appellee on September 13, 2017. On September 20, 2017, Appellee’s counsel contacted Appellant’s counsel to indicated he had been retained and stated in an email “[w]e are not going to fight the default[.]”¹ Thereafter, counsel for both parties entered into a series of negotiations through email to settle the matter in accordance with the below terms.

On September 21, 2017, Appellee’s counsel stated in an email² “[w]e are not looking to file to vacate the default judgment at this point” on the condition that Appellant comply with the following:

1. Appellee have access to the premises until October 13, 2017; and
2. Appellant vacate the default judgment once Appellee removes her belongings.

On September 22, 2017, Appellant replied in an email agreeing to Appellees conditions. On October 13, 2017, Appellee requested additional time to access the premises. That same day, Appellant responded that it would not be able to grant Appellee access from October 14, 2017 to

¹ See Appellant’s Opening Br., Ex. F.

² *Id.*

October 21, 2017; however, it would grant Appellee access from October 14, 2017 to October 16, 2017. In a series of emails, the parties agreed to the following³:

- a. Appellant would store Appellee's personal property and allow her access to the premises to remove her property from 9:00 am on October 14, 2017 through October 16, 2017 at 9:00 am.
- b. Appellee would pay a total of \$14,800, which consisted of \$3,000 for per diem rent from September 15, 2017 the lock out, until October 14, 2017, plus \$7,000 which was allegedly wired to Appellants on August 18, 2017 by Appellee, but never recovered by Appellants, and for the security deposit in the amount of \$4,800. As the security deposit was already being held by Appellants, this would result in a net payment of \$10,000 from Appellee to Appellants.
- c. Appellants would vacate the default judgment so as it would not appear on Appellee's credit history and dismissing the underlying matter with prejudice to provide finality.

Appellee provided payment in the amount of \$10,000 to the Appellants following the terms of the agreement. Appellants provided access to the premises during the agreed upon time frame. Appellee, however, was unable to remove all of her possessions from the premises during the agreed upon period. On October 18, 2017, Appellee's counsel contacted Appellant's counsel to request additional time for Appellee to remove her remaining personal property. Following additional negotiations, counsel for both parties agreed Appellee would be granted access on October 26 and 27, 2017; however, Appellee would pay per diem storage fees for the additional two days. Appellee provided the agreed upon payment and Appellant provided the agreed upon

³ *Id.*

access. Finally, on October 30, 2017, Appellee was provided with access for a final time to finish the retrieval of her personal property.

On November 8, 2017, Appellee filed a Motion to Vacate the default judgment on the basis that service was defective. On December 29, 2017, Appellant filed response to Appellee's Motion to Vacate arguing notice was hand delivered to Appellee. On April 25, 2018, the JP Court granted Appellee's Motion to Vacate. On Appellee 4, 2018, Appellant filed appeal in this Court from the JP Court decision granting Appellee's Motion to Vacate.

On July 30, 2018, Appellee filed a motion to dismiss arguing the lower court did not abuse its discretion when reviewing her Motion to Vacate. On August 17, 2018, Appellant filed response to Appellee's motion to dismiss contending the standard of review of the lower court's decision is de novo. On August 24, 2019, this Court held a hearing on Appellee's motion to dismiss and ordered briefing on the issue of what standard of review to apply. On September 28, 2019, the Appellee filed her opening brief in support of her motion to dismiss the appeal maintaining that the law supports an abuse of discretion standard of review in accordance with Rule 72.2(b)(3). On October 25, 2018, the Appellant filed its response brief in opposition to Appellee's motion to dismiss the appeal conceding the appeal is indeed governed under an abuse of discretion standard of review. However, Appellant argued the motion to dismiss was premature because Appellant had yet to submit a brief in accordance with Rule 72.2(b)(3). The Appellant failed to file and serve a brief within twenty (20) days as required under Court of Common Pleas Civil Rule 72.1(g); however, this Court granted Appellant the opportunity to brief the merits concerning the JP Court's grant of Appellee's Motion to Vacate.

On April 16, 2019, Appellant filed its Opening Brief. Appellant argues the JP Court abused its discretion when it failed to dismiss the underlying action with prejudice in accordance

with the agreements between the parties. Moreover, Appellant asserts the JP Court committed clear error and abused its discretion when it failed to find Appellee waived her right to contest the default judgement. Appellant relies on the first communication Appellee's counsel had with Appellant's counsel stating Appellee would not contest the default judgement, as well as the subsequent negotiations that took place between the parties.

On May 6, 2019, Appellee filed her Answering Brief. However, Appellee contends the communications between the parties simply established a framework for an agreement. Further, Appellee asserts Appellant failed to demonstrate the JP Court was manifestly unreasonable or capricious. Additionally, Appellee avers she did not waive her rights to contest the default judgement and directs this Courts attention to the email sent by Appellee's counsel to Appellant's counsel on September 21, 2017. Appellee argues she unequivocally reserved her right to contest the default judgement in this email.

On May 16, 2019, Appellant served it's Reply Brief. Appellant maintains the JP Court abused its discretion. Further, Appellant claims the JP Court committed an error of law and abused its discretion in applying the wrong standard of review in its analysis. More specifically, Appellant argues the JP Court applied J.P. Civil rule 60(b)(1)⁴ and found excusable neglect on the part of the Appellee, when the JP Court should have, instead, applied J.P. Civil Rule 60(b)(6).⁵ Appellee argues the standard under 60(b)(6), unlike the standard under 60(b)(1), calls for extraordinary situations or circumstances. Furthermore, Appellant contends the Appellee's

⁴ "On motion and upon such terms as are just the Court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect..."

⁵ "On motion and upon such terms as are just the Court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons: ... any other reason justifying relief from the operation of the judgment. Such motion shall be made within a reasonable time."

conditions, listed in the September 21, 2017 email, were met; and thus, Appellee's right to contest was nullified.

This is the Court's Opinion on Appellant's appeal of the lower court's decision.

STANDARD OF REVIEW

All final judgements of the JP Court in civil actions may be appealed as a matter of right to this Court.⁶ An appeal of a JP Court decision granting a motion to vacate default judgment requires this Court to review under an abuse of discretion standard.⁷ *Pitts v. White* sets forth the applicable abuse of discretion standard, which provides:

"The essence of judicial discretion is the exercise of judgment directed by conscience and reason, as opposed to capricious arbitrary action; and where a court has not exceeded the bounds of reason in view of the circumstances, and has not so ignored recognized rules of law or practice, so as to produce injustice, its legal discretion has not been abused; for the question is not whether the reviewing court agrees with the court below, but rather whether it believes that the judicial mind in view of the relevant rules of law and upon due consideration of the facts of the case could reasonably have reached the conclusion of which complaint is made."⁸

Thus, this Court does not consider whether it would have reached a different decision; rather, this Court must determine whether the JP Court decision "[was] the product of logic, based upon the facts and reasonable deductions to be drawn therefrom."⁹

⁶ 10 *Del. C.* § 9571.

⁷ Court of Common Pleas Civil Rule 72.2(b)(3).

⁸ 109 A.2d 786, 788 (Del. Super. 1954).

⁹ *Hurd v. Smith*, 2009 WL 1610516, at *1 (Del. Com. Pl. June 10, 2009).

DISCUSSION

The issue before this Court is whether the JP Court abused its discretion in failing to dismiss Appellee's Motion to Vacate and find Appellee waived her right to contest the judgment. Under the Justice of the Peace Civil Rule 60(b), "...the Court may relieve a party...from a final judgment, order or proceeding for...(1) mistake, inadvertence, surprise or excusable neglect...or (6) any other reason justifying relief from the operation of the judgment." The moving party must establish "(1) excusable neglect in the conduct that allowed the default judgment to be taken; (2) a meritorious defense to the action that would allow a different outcome to the litigation if the matter was heard on its merits; and (3) a showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted."¹⁰

a. The Justice of the Peace Court did abuse its discretion in failing to dismiss the underlying action with prejudice in accordance with the settlement agreement

Delaware law favors the voluntary settlement of contested suits, and such agreements will bind the parties where they agree to all material terms and intend to be bound.¹¹ In *Rome v. Archer*, the court found "[i]n determining fairness of a settlement, there is no requirement that opportunity be given to the parties to hold a trial as to the issues. To do so would defeat the basic purpose of settlement litigation."¹²

An agreement may be binding even if it is not in writing if the parties show the necessary intent to enter into such an agreement.¹³ Only in the event that both parties positively agree there will be no binding contract until the document is formally executed, will there in fact be no

¹⁰ *Verizon Delaware, Inc. v. Baldwin Line Const. Co.*, 2004 WL 838610, at *1 (De. Super. Apr. 13, 2004) (citing *Lewes Dairy, Inc. v. Walpole*, 1996 WL 111130 at *2 (Del. Super. 1996)).

¹¹ *Clark v. Ryan*, 1992 WL 163443, at *5 (Del. Ch. June 17, 1992) (citing *Neponsit Inv. Co. v. Abramson*, 405 A.2d 97 at *100 (Del. 1979)).

¹² *Rome v. Archer*, 197 A.2d 49, at *53 (Del. 1964).

¹³ *Whittington v. Dragon Group L.L.C.*, 2013 WL 1821615 at *3 (Del. Ch. May 1, 2013).

agreement.¹⁴ In *Whittington*, the court held when a settlement agreement has been reached, the fact that it was not formally drawn up and executed alone does not leave the transaction incomplete and without binding force.¹⁵ Simply because one party signed and the other did not was irrelevant in the “absence of a positive agreement that it should not be binding until so reduced to writing and formally executed.”¹⁶

In *Schwartz v. Chase*, the respondent moved for the enforcement of an alleged agreement in place that followed extensive negotiations between both parties’ counsel.¹⁷ The *Schwartz* court set out a three-prong approach¹⁸ to determine the existence of an agreement: 1. the parties must agree upon all material terms; 2. all preconditions must be satisfied; and 3. the parties intended to be bound. At the date the agreement allegedly became binding, preconditions were still unfulfilled.¹⁹ There was insufficient evidence to demonstrate both parties agreed to all material terms of the agreement and that they intended to be bound by the agreement.²⁰ Thus, the court found the agreement failed to meet the three necessary elements.²¹

It is clear from the actions of both Appellant and Appellee that an intention to be bound by the terms of the agreements was clearly present. The Appellant and Appellee complied with the original negotiated terms and the subsequent negotiations. While the Appellee views the negotiations as a framework for an agreement, the negotiations coupled with the carrying out of its terms is sufficient to demonstrate a binding agreement. Under the three-prong *Schwartz* test, an agreement on all the material terms is implicit in Appellant and Appellee’s actions in carrying

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 2010 WL 2601608, at *3 (Del. Ch. June 29, 2010).

¹⁸ *Id.* at *4.

¹⁹ *Id.* at 8.

²⁰ *Id.* at 10.

²¹ *Id.* at 10.

out the terms. Appellee provided payment and Appellant consistently provided access to the premises. The preconditions for the judgment to be vacated were met when the parties complied with the material terms. Further, no remaining preconditions existed when the Appellee filed its Motion to Vacate. Both Appellant and Appellee's intent to be bound is demonstrated implicitly through their actions in negotiations. Absent evidence showing the Appellee never intended to be bound by the agreements or planned to negotiate in bad faith, the Appellee's conduct is more than sufficient to imply intention to be bound. Under *Whittington*, this agreement found under the *Schwartz* test, although not formally executed, is sufficient to constitute a binding agreement.

In this case, Appellee has claimed should this Court overturn the lower court, it would constitute an impermissible substitution of judgement in place of the JP Court's decision.²² However, rather than substituting the JP Court's decision in overturning, this Court instead affirms the preference for settlement outside of court. If this Court were to uphold the lower court's decision, it would signal a complete lack of deference for previously negotiated settlement agreements conducted in good faith and fail to recognize the accepted precedent and favored attitudes under Delaware law. Under *Clark* and *Rome*, the Delaware Supreme Court repeatedly denoted Delaware law prefers settlements and will uphold agreed upon settlements. In granting a motion for a new trial on the merits, the JP Court abused its discretion and ignored precedent favoring negotiation.

b. The Justice of the Peace Court did abuse its discretion by failing to find Appellee waived her right to contest the judgment

In *Jones v. Savin*, the court found "a waiver is an intentional relinquishment of a known right or such conduct as warrants an inference of such intent."²³ The court in *DiRienzo v. Steel*

²² See Appellant's Opening Br.

²³ *Jones v. Savin*, 96 A. 756 at 757 (Del. Super. 1916).

Partners Holdings, L.P. held that “[a] waiver may be express or implied, but either way, it must be unequivocal.”²⁴ Further, the *DiRienzo* court stated “[a]n express waiver exists where it is clear from the language used that the party is intentionally renouncing a right that it is aware of.”²⁵ Waivers may have preconditions as part of its structure, but a conditional waiver, once the preconditions have been fulfilled, act with the same force and same ramifications as an unconditional waiver.²⁶ Delaware courts have general discretion to vacate default judgments and may exercise this discretion by imposing conditions it deems appropriate.²⁷

A waiver of rights in this matter could be construed as an affirmative waiving of the right to contest the default judgment ordered by the JP Court or an implicit waiver based on the actions of the party. Here, in his initial contact to Appellant’s counsel, Appellee’s counsel stated “[w]e are not going to fight the default[.]”²⁸ Appellee has claimed Appellant singles out her counsel’s initial email and fails to consider the record as a whole, specifically the September 21, 2017 email, in which Appellee’s counsel laid out specific conditions to precede the vacating of the judgment.²⁹ However, given subsequent discussions and actions taken by both parties to comply with these pre-conditions, the second email is a conditional explicit waiver.

Moreover, the actions of both parties throughout the negotiating process speak for themselves. The Appellant and Appellee laid out specific, clear terms that were agreed to and implicitly accepted, which is evident by their actions. The parties complied with all terms of the agreements, and thus, this conduct serves as an implicit waiver of the right to contest the outcome.

²⁴ *DiRienzo v. Steel Partners Holdings, L.P.*, 2009 WL 4652944 at *4 (Del. Ch. Dec. 8, 2009).

²⁵ *Id.*

²⁶ *Williams v. Delcollo Elec., Inc.*, 576 A.2d 683 at 687 (Del. Super. June 8, 1989).

²⁷ *Id.*

²⁸ See Appellant’s Opening Br., Ex. F.

²⁹ See Appellant’s Opening Br.

Appellee's only avenue for claiming there was not an explicit or implicit waiver would only lead to implications of negotiation in bad faith. If this were the case, Appellee's arguments would be irrelevant and the resolution would be clear.

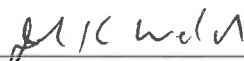
c. The Justice of the Peace Court used the improper analysis under Justice of the Peace Court Civil Rule 60.

The JP Court analyzed Appellee's Motion to Vacate under JP Court Civil Rule 60(b)(1), instead of the correct subsection 60(b)(6). However, this issue is now moot being that this Court has found the JP Court abused its discretion in reopening the case when the parties had entered into a settlement agreement.

CONCLUSION

For the foregoing reasons, the JP Court's grant of Appellee's Motion to Vacate is REVERSED, and the case is REMANDED to the JP Court for proceedings consistent with this opinion.

IT IS SO ORDERED.



John K. Welch,
Judge

cc: Ms. Patricia Thomas, Civil Clerk